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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,556	10/24/2003	Fred L. Horna	00221.US1 DV1	1369

25533 7590 08/15/2005

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EXAMINER
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SALIMI, ALI REZA

ART UNIT	PAPER NUMBER
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1648

DATE MAILED: 08/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/692,556	Applicant(s) HOMA ET AL.	
	Examiner A R. Salimi	Art Unit 1648	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2005.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 25 and 26 is/are pending in the application.
- 4a) Of the above claim(s) 26 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 25 is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10/24/ 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/24/04</u> . | 6) <input type="checkbox"/> Other: _____  |

1/10

Art Unit: 1648

### **DETAILED ACTION**

Claims 25-26 are pending.

Raw Sequence Listing have been entered.

Submitted Information Disclosure Statement (I.D.S) is noted.

#### ***Election/Restrictions***

Applicant's election without traverse of Group I (within scope of SEQ ID NO: 1) in the reply filed on 7/14/2005 is acknowledged.

Claim 26 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Group. Election was made **without** traverse in the reply filed on 7/14/2005.

**The claimed invention has been examined only to the extent of selected nucleotide sequence designated as SEQ ID NO: 1. Applicants are requested to amend the claim accordingly by canceling the non-elected sequences.**

**Applicant is reminded to cancel the claims to the non-elected claims.**

#### ***Subject Matter Allowable over Prior art***

Claim 25 within the scope of SEQ ID NO: 1 is deemed free of prior art, given failure of the prior art to teach or reasonably suggest the SEQ ID NO: 1 mutant polymerase of herpes virus. The closest art identified is by Tsurumi et al, Gene 1987,

Art Unit: 1648

Vol. 52(2-3), pages 129-137. Tsurumi et al disclosed a complete nucleotide sequence of herpes virus polymerase gene. The disclosure, however, does not read on the now claimed sequence, and at the time of filing there was no motivation to mutate the sequence disclosed by Tsurumi et al.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to A. R. Salimi whose telephone number is (571) 272-0909. The examiner can normally be reached on Monday-Friday from 9:00 Am to 6:00 Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel, can be reached on (571) 272-0902. The Official fax number is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-1600.


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you

Art Unit: 1648

have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A. R. Salimi

8/9/2005



ALI R. SALIMI  
PRIMARY EXAMINER